

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL MUMBAI**

M.A. No. 962 of 2024 (Interim Reliefs)

Appeal No. AT006000000235101/2024

IN

Complaint No. CC006000000198190

Mr. Nimish B. Desai)
Flat No. A-1304, Sheetalnath CHS Ltd.,)
Sudha Park, Shantipath, Garodia Nagar,)
Ghatkopar East, Mumbai - 400 077.) ... Appellant

-Versus-

Rare Townships Private Limited,)
Through its Director, Mr. Shrenik Mehta)
C.T.S. No. 194B, Nirankari Baba Ground,)
Ghatkopar Mankhurd Link Road,)
Ghatkopar (East), Mumbai – 400 077.) ... Respondent

ALONGWITH

Appeal No. AT06/00573/2025

IN

Complaint No. CC006000000198190

Rare Townships Private Limited,)
CTS No. 194B, PWD Ground,)
Ghatkopar Mankhurd Link Road,)
Ghatkopar (East), Mumbai – 400 077.) ... Appellant

-Versus-

Mr. Nimesh B. Desai)
Flat No. A-1304, Sheetalnath CHS Ltd.,)
Sudha Park, Shantipath, Garodia Nagar,)
Ghatkopar East, Mumbai – 400 077.) ... Respondent



Adv. Mr. Sunil Kewalramani for Allottee

Adv. Mr. Rubin Vakil a/w Adv. Ms. Sana Khan for Promoter

**CORAM : SHRI S. S. SHINDE (J.), CHAIRPERSON, &
DR. RAJAGOPAL DEVARA, MEMBER (A)**

RESERVED ON : 15th JUNE 2026

PRONOUNCED ON : 21st JULY 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

[PER: DR. RAJAGOPAL DEVARA, MEMBER (A)]

1. The captioned appeals arise from the impugned order dated 24th November 2023 passed by Member-1, Maharashtra Real Estate Regulatory Authority (for short, "the Authority") in Complaint No. CC006000000198190, filed by the Allottee. By the said order, the Promoter was directed to hand over possession of the subject flat after obtaining Occupancy Certificate at the earliest and to pay interest to the Complainant from 01.07.2019 till the actual date of handing over possession.
2. For the sake of convenience, the parties will hereinafter be referred to as "Allottee" and "Promoter" respectively.
3. The Allottee gained knowledge of the project known as "Rising City - North Sea Heights" and booked Flat No. 0707, admeasuring 95.08 sq. mtrs., along with two parking spaces bearing Nos. 83 and 90 situated in B-3 Basement of the North Sea Heights Building at Ghatkopar (East), Mumbai. The said flat was booked under the



Subvention Scheme for a total consideration of Rs.2,20,42,158/- and Agreement for Sale was executed between the parties on 28.11.2015. Under the said scheme, the Promoter arranged a housing loan of Rs.1,75,00,000/- from PNB Housing Finance Limited. The Allottee has paid an amount of Rs.1,36,92,766/- towards part consideration from 04.05.2015 to 21.07.2016. As per the Agreement for Sale, the Promoter has agreed to give possession of the said flat on or before 31.12.2018. Admittedly, the Promoter has failed to hand over possession on the agreed date.

4. Learned Counsel appearing for the Allottee submitted that the learned Authority has erroneously directed the Promoter to pay interest from 01.07.2019 instead of 01.01.2019. It was further submitted that the learned Authority committed an error in directing payment of interest only after obtaining Full Occupancy Certificate. The agreed date of possession as per Agreement for Sale was 31.12.2018, but the learned Authority granted extension of six months to the Promoter i.e. till 30.06.2019 and thereby directed the Promoter to pay interest to the Allottee from 01.07.2019. It was contended that the learned Authority has misinterpreted Section 18 of the RERA Act, 2016. Once delay in handing over possession is established, Section 18 mandates payment of interest for every month of delay until actual handing over of possession of the said



premises, where the Allottee chooses not to withdraw from the project. Section 18 (1) of RERA does not confer upon the Authority to allow grace period to the Promoter in payment of interest to the Allottee.

5. The Allottee further submitted that the learned Authority has failed to follow the law laid down by the Hon'ble Supreme Court in the matter of *M/s. Newtech Promoters and Developers Private Limited Versus the State of UP & Ors. Etc.* [in Civil Appeal Nos. 6745-6749 and 6750-6757 of 2021 decided on 11.11.2021] as well as the judgment of Hon'ble Bombay High Court in the matter of *Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs. Union of India and ors.* [Writ Petition No. 2737 of 2017]. Reliance was placed on Para No. 256 of the aforesaid judgment, wherein it was held that:

"256. Section 4(2)(1)(C) enables the Promoter to revise the date of completion of the project and handover possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(1)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section



4(2)(1)(C) he is not absolved of the liability under the agreement for sale."

6. The Allottee further submitted that the learned Authority erred in extending the benefit of moratorium period under MahaRERA Order Nos. 13, 14 and 21 dated 02.04.2020, 18.05.2020 and 06.08.2021 respectively. In the present case, according to the Allottee, the agreed date of possession was 31.12.2018, which is well before the COVID-19 pandemic. Therefore, the Promoter was not entitled to claim benefit of moratorium period under aforesaid orders. The Allottee placed reliance upon the decisions of this Tribunal in the matter of Abhishek Anuj Sukhadia and Anr. VS M/s. Pragatej Builders & Developers Pvt. Ltd. [in Complaint No. CC006000000195842 of 2021] and in the matter of Kranti Uday Bhujbal & Anr VS Shore Dwellings Private Limited [in Complaint No. CC005000000022707. The Allottee further submitted that the learned Authority in the impugned order failed to direct Promoter to facilitate formation of a Society under Section 11(4)(e) of RERA Act, 2016, but also failed to penalise the Promoter under Section 61 of RERA Act for violating the said provisions. Interestingly, in an earlier order dated 29.10.2020, passed by the very same Member MahaRERA, in the same project, regarding the same building 'North Sea Heights', the learned Authority has observed that, it is the statutory duty of the Promoter



to enable the formation of a Society, once more than 50% flats in the project are sold, and the Promoter cannot evade from the said statutory obligation.

7. Per contra, learned Advocate for the Promoter submitted that, as per the terms of Agreement for Sale, the date of possession has not yet arrived. Clause 2 (XXVI) of the said agreement provided that the possession date shall mean 31st December 2018 or such extended date as may arise due to conditions mentioned under the agreement including force majeure. Further, Clause 36 of the said agreement enumerated the events or combination of events or circumstances beyond the control of the Promoter that comprise *force majeure* and therefore, that the period affected by such events is liable to be excluded while calculating the date of possession. It was submitted that the said project completion was delayed due to Public Interest Litigation No. 86 of 2014 relating to Heights Clearance, delay caused due to change in Development Control and Promotion Regulations (DCPR) 2034, and delay caused on account of environmental clearances and impact of the COVID-19 pandemic. It was further submitted that the revised completion date reflected on the MahaRERA portal is 30.06.2026 and therefore the contractual obligation to hand over possession has not arisen. In this context, Promoter relied upon the judgment of Hon'ble Supreme Court of



India in the case of *Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs. Union of India and ors (supra)*. It was held that the provisions of RERA are prospective. It was submitted that the Allottee relied upon the contractual date of possession while ignoring the provisions relating to force majeure and arbitration contained in the Agreement for Sale.

8. The Promoter further submitted that the project was delayed on account of the stay order dated 01.09.2016 passed by the Hon'ble Bombay High Court in PIL No. 86 of 2014 whereby restrictions were placed on Airport Authority of India (AAI) from issuing fresh height clearances and construction of buildings beyond the prescribed height limits within a specified radius of the Airport runway was stayed. It was submitted that although the Promoter applied for requisite permissions in 2017, the Airport Authority of India by email dated 20.12.2017, informed the Promoter that the application could not be processed until a final decision of the Hon'ble High Court. Thereafter, the Development Control Regulations of Mumbai 2034 were made effective since September 2018 wherein even existing development projects where Occupation Certificate was issued were required to comply with the provisions of DCPR 2034. Further, applications under DCPR 2034 could only have been made and processed after receipt of Civil Aviation NOC. According to the



Promoter, these circumstances were entirely beyond its control therefore constituted force majeure. The Promoter further submitted that the Allottee was kept informed of the status of construction through emails and personal interactions including an email dated 09.12.2020, explaining the circumstances leading to the delay. The Promoter in its Cross Appeal No. AT06/00573 of 2025 sought the following reliefs as follows:

- "a. This Hon'ble Tribunal be pleased to call for the entire paper and proceedings in respect of complaint being no. CC006000000198190 and after examining the legality and propriety of the Impugned Order dated 24th November 2023, be pleased to quash and set aside the Impugned Order dated 24th November 2023 passed by Hon'ble Authority.
- b. This Hon'ble Tribunal be pleased to hold that the said Project was affected by force majeure circumstances which were beyond the control of the Appellant;
- c. This Hon'ble Tribunal be pleased to consider that the date of possession stood revised in terms of the Act, its Rules and Regulations and the date of possession revised on the MahaRERA web portal;



d. For such other reliefs as this Hon'ble Tribunal may deem fit and proper."

9. The Promoter further submitted that the progress of the said project was adversely affected by environmental regulations imposed by the National Green Tribunal, (Western Zone) Bench, Pune, wherein extraction of sand from coastal areas and prohibiting use of mechanical equipment for extracting sand was imposed. It was further submitted that, around the same period, the Hon'ble Supreme Court of India in the matter of *M/s. Goel Ganga Developers India Pvt. Ltd. Versus Union of India through Secretary Ministry of Environment and Forests and Ors.* [in Civil Appeal No. 10854 of 2016] introduced changes in Environmental Impact Assessment parameters for issuing Environmental Clearance Certificate. Therefore, the Promoter had to again apply for the Environmental Clearance Certificate, and the process resulted in delays and cost escalations.
10. We have heard learned Advocates appearing for respective parties. The submissions advanced by the learned Advocates appearing for respective parties are nothing but reiterations of the contents of the complaints, affidavit in replies, appeal memos and written submissions.



11. Learned Advocate appearing for the Allottee placed reliance on the following judgments:

- i. In the case of *Mrs. Akella Lalitha versus Sri Konda Hanumantha Rao & Anr.* [in Civil Appeal Nos. 6325-6326 of 2015] decided by the Hon'ble Supreme Court of India.
- ii. In the case of *Imperia Structures Ltd. Versus Anil Patni and Another* [in Civil Appeal No. 3581-3590 of 2020 @ Civil Appeal Diary No. 9796/2019] decided by the Hon'ble Supreme Court of India.
- iii. In the case of *M/s. Newtech Promoters and Developers Pvt. Ltd. Versus State of UP & Ors. Etc.* [Civil Appeal No(s). 6745 – 6749 of 2021 Arising Out of SLP (Civil) No(s). 3711-3715 of 2021] decided by the Hon'ble Supreme Court of India.
- iv. In the case of *Rare Townships Pvt. Ltd. Versus Saji Mathews and Anr.* [Second Appeal No.144 of 2026 with Interim Application No. 2337 of 2026] decided on April 15, 2026 by the Hon'ble High Court of Bombay.
- v. In the case of *Rare Townships Private Limited, Versus Saji Mathew and Anr.* [in Appeal No. AT006000000053728 of 2022] decided on January 19, 2026 by the Maharashtra Real Estate Appellate Tribunal, Mumbai.



- vi. In the case of *Abhishek Anuj Sukhadia & Anr. Vs. M/s Pragatej Builders & Developers Pvt. Ltd.* [in Appeal No. AT0006000000053317 of 2021 in Complaint No. CC0060000000195842 of 2021] decided on 07th February 2023 by the Maharashtra Real Estate Appellate Tribunal, Mumbai.
- vii. In the case of *Shri Nitin Madhukar Shewale & Anr. Versus M/s. Sanklecha Construction Pvt. Ltd. and Ors.* [in Appeal No. AT0060000000053455] decided on 07th November 2025 by the Maharashtra Real Estate Appellate Tribunal, Mumbai.
- viii. In the case of *Moneyam Natesan Versus Lokhandwala Kataria Construction Pvt. Ltd. & Anr.* [Misc. Application No. 598/22 (Possession) in Appeal No. AT0060000000052359 in Complaint No. CC0060000000056240/18] decided 19th January, 2024 by the Maharashtra Real Estate Appellate Tribunal, Mumbai.
12. Learned Advocate appearing for the Promoter placed reliance on the following judgments:
- i. In the case of *Neelkamal Realtors Suburban Pvt. Ltd. and anr. versus Union of India and ors.* [2017 SCC OnLine Bom 9302: (2018) 1 AIR Bom R 558 : AIR 2018 (NOC 398) 136: (2018) 1 RCR (Civil) 298 : (2017) 2 LACC 46 (DB)] decided on December 6, 2017 by the Hon'ble High Court of Bombay.



- ii. In the case of *Central Bank of India, Ltd. Amritsar V/s Hartford Fire Insurance co., Ltd.* [1964 SCC OnLine SC 239 : AIR 1965 SC 1288 : (1965) 1 SCJ 498 : (1965) 35 Comp Cas 378] decided on September 11, 1964 by the Hon'ble Supreme Court of India.
- iii. In the case of *Zoroastrian Cooperative Housing Society Ltd. and Others Versus District Registrar, Cooperative Societies (Urban) and Others* [(2005) 5 Supreme Court Cases 632 in Civil Appeal No. 1551 of 2000] decided on April 15, 2005 by the Hon'ble Supreme Court of India.
- iv. In the case of *Kranti Associates Private Limited And Another Versus Masood Ahmed Khan And Others* [(2010) 9 Supreme Court Cases 496 in Civil Appeals No. 7472 of 2010 with No. 7474 of 2010] decided on September 8, 2010 by the Hon'ble Supreme Court of India.
- v. In the case of *Institute of Chartered Accountants of India Versus L.K. Ratna and Others* [(1986) 4 Supreme Court Cases 537 in Civil Appeals Nos. 1911-12 of 1980] decided on October 21, 1986 by the Hon'ble Supreme Court of India.
- vi. In the case of *Oryx Fisheries Private Limited Versus Union of India and Others* [(2010) 13 Supreme Court Cases 427 Civil



Appeal No. 9489 of 2010] decided on October 29, 2010 by the Hon'ble Supreme Court of India.

- vii. In the case of *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Versus Subhash Chandra Yograj Sinha* [1961 SCC OnLine SC 60 : (1962) 2 SCR 159 : AIR 1961 SC 1596 : (1962) 1 SCJ 377 Civil Appeal No. 49 of 1961] decided on April 21, 1961 by the Hon'ble Supreme Court of India.
- viii. In the case of *Sundaram Pillai and Others Versus V.R. Pattabiraman and Others* [(1985) 1 Supreme Court Cases 591 Civil Appeal No. 1178 of 1984] decided on January 24, 1985 by the Hon'ble Supreme Court of India.
- ix. In the case of *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and Others* [(2003) 2 Supreme Court Cases 111 Civil Appeals Nos. 8003 of 2002 with Nos. 1539-41 of 2001 and 8004-12 of 2002] decided on December 3, 2002 by the Hon'ble Supreme Court of India.
- x. In the case of *Haryana Financial Corporation and Another vs. Jagdamba Oil Mills and Another* [(2002) 3 Supreme Court Cases 496 Civil Appeal No. 607 of 2002] decided on January 28, 2002 by the Hon'ble Supreme Court of India.

13. After considering the submissions advanced by the learned Advocates appearing for respective parties, the pleadings of the



parties, material on record and impugned order, the following points arise for our consideration, and we have recorded our findings thereupon for the reasons to follow.

Sr. Nos.	Points	Findings
1.	Whether the impugned order dated 24.11.2023 passed by the learned Member-1, MahaRERA in the Complaint No. CC006000000198190 filed by the Allottee, warrants interference in the captioned appeals?	In the affirmative
2.	Whether the Allottee and Promoter are entitled to reliefs sought in their respective appeals?	In the affirmative
3.	What order?	As per final order

REASONS

14. Upon careful examination of pleadings of the parties, material placed on record and submissions advanced by the respective parties, it is clearly revealed that the Allottee booked the subject flat in the project "Rising City – North Sea Heights" and executed Agreement for Sale for a total consideration of Rs.2,20,42,158/-. It is not in dispute that the Allottee paid substantial consideration amounts towards the sale consideration to the Promoter. It is not in dispute



that the agreed date of possession of the subject flat was on or before 31.12.2018.

15. Admittedly, the Promoter has failed to give possession of the subject flat on the agreed date, compelling the Allottee to file complaint and initiate proceedings before the Authority, seeking possession of the flat along with interest for delayed possession and other reliefs.
16. The contention of the promoter for the delay in the completion of the project was due to circumstances beyond its control, namely delay in permission from the Civil Aviation, Interim Stay Orders passed by the Hon'ble Bombay High Court, implementation of new Development Control and Promotion Regulations (2034), environmental regulations and the Covid-19 Pandemic. It was further contended that Clause 2 (XXVI) of the Agreement for Sale executed between the parties expressly provided that the possession shall be delivered on 31st December 2018 or such extended date as may arise on account of *force majeure* or other circumstances contemplated under the Agreement for Sale. The Promoter also invoked Clause 36 of the said Agreement for Sale, which enumerates events that comprise *force majeure* and stipulated that the period attributable such events is liable to be excluded while calculating the date of possession.



17. We do not accept the contentions of the Promoter. The *force majeure* factors as demonstrated by the Promoter do not fall within the ambit of the explanation to Section 6 of the RERA Act 2016, which clearly defines *force majeure* to mean cases of war, flood, drought, cyclone, fire, earthquake, or any other calamities caused by nature affecting the regular development of a real estate project. The delays in obtaining statutory approvals, regulatory permissions are sanctions from competent Authorities cannot be brought within the scope of force majeure contemplated under Section 6 of the RERA Act, 2016.

The reason of Covid-19 pandemic, which was declared a *force majeure* factor by the Authority, is also misplaced. In the present case, the date of possession as per the Agreement for Sale is 31st December 2018, whereas the Covid-19 pandemic and the nationwide lockdown commenced only in March 2020. Therefore, the delay has occurred much prior to the onset of Covid-19 pandemic, and the same cannot be invoked as justification for failure to hand over possession of the said flat within the agreed period. In view of Section 6 of the RERA Act, 2016, we are of the considered view that the delay in granting permission or sanction from various competent authorities, etc., as contended by the Promoter, cannot be construed as *force majeure*. This constitutes commercial and



regulatory risks incidental to the project development, for which the Promoter alone is responsible. An Allottee cannot be expected to anticipate such contingencies or bear the brunt of the failure on the part of the Promoter to act professionally by reasonably assessing the agreed date of possession.

18. It is not in dispute that the agreed date of possession under the Agreement for Sale was 31st December 2018. Admittedly, the construction of the project is still incomplete, and possession of the subject flat has not yet been handed over. Therefore, the Promoter has failed to hand over possession as per the contractual obligation to deliver within the agreed date. As a result, thereof, the Allottee is entitled to relief under Section 18 of the RERA Act, 2016.
19. The Hon'ble Bombay High Court, in the case of *Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs. Union of India and ors (supra)*, while considering the obligations cast upon the Promoter under the RERA Act has observed in paragraph 119, as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract os-wp-2737-



17 & ors-RERA-JT.doc between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and a allottee. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of the parties, is unwarranted, illegal and highly arbitrary in nature."

20. The aforesaid observations clearly recognize the responsibility of estimating a realistic timeline for completion a real estate project squarely rest upon the Promoter. The Promoter as an expert in real estate project, is well aware of the factors that may endanger the prospects of timely completion of the project. So, being sector expert and considering legal time consumed for various activities and approvals, promoter is the best judge to estimate the likely timeline for completion of the project. On the contrary, the Allottee



has no domain knowledge, neither aware nor expected to be aware of the nature of mitigating factors which may delay the project. The Allottee executed the agreement for sale based on the commitment given by the promoter to hand over possession on the agreed date as specified in the said agreement.

21. In view of the responsibility of the Promoter to assess the likely date of completion of the project, the Allottee has very limited liability to discharge in relation to the project. The main obligation of the Allottee as per the terms of the Agreement for Sale *inter alia* relates primarily to making payments from time to time so that the project is not starved of funds to cause delay in completion. It is not in dispute that the Allottee has made substantial payment towards the consideration amount as agreed between the parties. But the promoter failed to hand over possession on the agreed date as per the Agreement for Sale. Allottee can be held responsible only if failure to discharge his obligation as per the Agreement for Sale has caused delay in completion of the project. There is no material on record to indicate that any act or omission on the part of the Allottee contributed to the delay in completion of the project. If the Allottee is not responsible for the delay, he is entitled to the relief under Section 18 of RERA Act, 2016 and cannot be saddled with consequences for delay in completing the project.



22. Section 18(a) RERA Act, 2016, makes it clear that the promoter is obligated to hand over possession of flat as per the Agreement for Sale by the date specified therein. Once the Promoter fails to discharge the said obligation, the consequences prescribed under Section 18 automatically follow. The ratio laid down by the Hon'ble Supreme Court of India in the case of *M/s. Imperia Structures Ltd. versus Anil Patni And Another Etc.* [in Civil Appeal No. 3581-3590 of 2020] is as under:

"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."



23. Even if *force majeure* factors as demonstrated by the Promoter are given some consideration, we are of the view that the Promoter is not entitled to get the benefit of the same for the said reasons are not attributable to the Allottee, nor is the case of the Promoter that the Allottee in any way caused the delay in possession while elaborating the scope of Section 18 of RERA Act, 2016. The Hon'ble Supreme Court of India, in *M/s. Newtech Promoters and Developers Pvt. Ltd. Versus State of UP & Ors. Etc. (supra)* held that:

"Para 25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."



24. The ratio laid down by the Hon'ble Supreme Court of India makes it clear that there are no shackles or limitations on the exercise of a right by Allottee to seek interest once there is delay in possession. According to the Agreement for Sale, the Promoter has committed to hand over possession on or before 31st December, 2018. The promoter failed to complete the project and hand over possession of the said flat to the Allottee on the agreed date of possession. It demonstrates that the Promoter has failed to adhere to the obligation cast upon the Promoter under Section 18 (1) of RERA Act, 2016. Therefore, the Allottee is entitled to receive interest from the agreed date of possession, i.e. 01.01.2019, till the actual date of possession.
25. The learned Authority in the impugned order directed payment of interest to the Allottee subject to obtaining full Occupancy Certificate (OC). It is pertinent to note that Section 18 of RERA Act, 2016, contemplates that in case of delay in handing over possession and the Allottee wishes to continue in the said project, the Promoter is liable to pay interest for every month of delay till handing over of the possession. The statutory liability is, therefore, linked to the actual delivery of possession and not to the date of obtaining full occupancy certificate. Consequently, the direction issued by the learned Authority making payment of interest contingent upon



obtaining occupancy certificate is in contravention of Section 18 of RERA Act, 2016.

26. In view of the aforesaid, the Allottee is entitled to relief under Section 18 of RERA Act, 2016 from 01.01.2019 until the date of actual handing over of possession. The appeal preferred by the Allottee therefore deserves to be partly allowed, whereas the cross appeal preferred by the Promoter is devoid of merit and liable to be dismissed. Therefore, the impugned order warrants interference and accordingly we proceed to pass the following order:

ORDER

1. Appeal No. AT006000000235101 of 2024 is partly allowed.
2. Appeal No. AT06/00573 of 2025 preferred by the Promoter is dismissed.
3. The impugned Order dated 24th November 2023 passed by the learned Member-1, Maharashtra Real Estate Regulatory Authority, in the Complaint No. CC006000000198190 is modified to the extent as under:
 - a. The Promoter is directed to pay interest on the consideration amount paid by the Allottee, from 01.01.2019 till the date of actual possession, at the rate of State Bank of India's highest Marginal Cost of Lending



Rate (MCLR) plus 2% within a period of thirty (30) days from this order.

- b. In the event of failure to pay interest within the stipulated period, the Promoter shall also pay further interest on the outstanding amount at the same rate from the date of this order until the actual realization of the amounts.
4. Parties to bear their own costs.
5. The appeals are accordingly disposed of as per the above terms.
6. Pending Misc. Applications, if any, stand disposed of.
7. The copy of this judgment be communicated to the Authority and the respective parties as per Section 44(4) of the Real Estate (Regulation and Development) Act, 2016.


(DR. RAJAGOPAL DEVARA)


(S. S. SHINDE, J.)

V. K. Bhople